

REMARKS

Status of the Claims

Claims 1, 3-12, 14, 15, 17, 18, 20, 21, 23 and 24 are currently pending in the application. Claims 1, 3-12, 14, 15, 17, 18, 20, 21, 23 and 24 stand rejected. Claim 11 has been amended as set forth herein. All amendments are made without prejudice or disclaimer. No new matter has been added by way of the present amendments. Reconsideration is respectfully requested.

Objections to the Claims

The Examiner objects to claim 11 for omitting the phrase “is carried out under a centrifugal.” (*See*, Office Action of September 21, 2005, at page 2, hereinafter referred to as “Office Action”). Although Applicants do not believe claim 11 is in improper form, to expedite prosecution, claim 11 has been amended as suggested by the Examiner. Reconsideration and withdrawal of the objection to claim 11 are respectfully requested.

Rejections Under 35 U.S.C. § 102(b)

Claims 1, 3-12, 14, 15, 17, 18, 20, 21, 23 and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Hansen, WO 98/54961 (hereinafter referred to as “Hansen”). (*Id.*). Applicants traverse the rejection as set forth herein.

The Examiner states that Hansen discloses the use of an Eppendorf tube and that after “the heat shock, the tube containing the maize cells was centrifuged in an Eppendorf centrifuge, the supernatant N6 liquid medium discarded, and it was replaced by the *Agrobacterium*

suspension liquid.” (*Id.* at page 3). The Examiner’s rejection of the claims relies entirely on the contention that the Eppendorf tube was centrifuged in Hansen. However, it is widely known to those of ordinary skill in the art that Eppendorf tubes are commonly used reaction vessels for the mixing of all manner of solutions and that Eppendorf tubes are used in the place of ordinary test tubes because of their convenience, disposability and collection of small amounts of liquid into a conical center. Thus, the mere use of an Eppendorf tube does not necessarily or even generally suggest that the Eppendorf tube must be or will be centrifuged.

Hansen discloses at column 17, line 18 that the sample used is a type I callus of maize. Type I callus of maize is a nonfriable material. (*See*, M. Freeling et al., eds., *The Maize Handbook*, pp. 663-664, 1994, Springer Verlag, a copy of which is submitted herewith as Exhibit A). As expressly described in Freeling et al., in the paragraph bridging pages 663 and 664, the maize type I callus is nonfriable. Thus, the maize type I callus must be subcultured with a scalpel and forceps. In fact, maize type I callus is hard and dense, such that it immediately sinks in most liquid media. One of ordinary skill in the art of plant cell culture knows that there is no need to centrifuge maize type I callus to separate the cells from the media or to collect maize type I callus.

Thus, Hansen does not disclose a centrifugation step, as is recited by the present claims. Therefore, Hansen cannot anticipate the presently claimed invention. Furthermore, the presently claimed invention cannot be obvious in light of Hansen for the very same reason. (*See, In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991), stating “the prior art reference (or references when combined) must teach or suggest all the claim limitations.”).

Dependent claims 3-12, 14, 15, 17, 18, 20, 21, 23 and 24 are not anticipated by or, in the alternative, obvious in light of the disclosure of Hansen for, *inter alia*, depending from a non-anticipated and non-obvious base claim, claim 1.

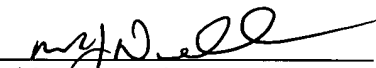
Reconsideration and withdrawal of the anticipation rejection of claims 1, 3-12, 14, 15, 17, 18, 20, 21, 23 and 24 are respectfully requested.

If the Examiner has any questions or comments, please contact Thomas J. Siepmann, Ph.D., Registration No 57,374 at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By 
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Attachment: Exhibit A

